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BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 582
Public Views on Major Rail Consolidations

COMMENTS

Submitted By

THE MEMBERSHIP OF THE

WESTERN COAL TRANSPORTATION ASSOCIATION

Thomas C. Canter
Executive Director
The Western Coal Transportation Association
4 Meadow Lark Lane, #100
Littleton, CO 80127-5718
303-979-2798
Fax: 303-973-1848
e-mail: westrans@aol.com

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INTEREST OF THE WESTERN COAL TRANSPORTATION ASSOCIATION

The Western Coal Transportation Association ("WCTA") is a non-profit corporation that maintains and promotes through lawful cooperation and the exchange of ideas, the orderly and effective development of the transportation of coal originating in the states west of the Mississippi River. WCTA endeavors to serve the needs of the general public, industry, and all modes of coal transportation. WCTA members are vitally interested in reliable, efficient, and economic rail service in the United States. The organization was formed in 1973 as coal from the Powder River Basin was beginning to be delivered over long distances by rail. Educating the members regarding current and potential coal transportation issues and facilitating the resolution of coal transportation problems are primary goals of WCTA. There are currently 85 members with the field of membership being coal producers, coal consumers, and rail product and service providers. Our electric utility members are organizationally and geographically diverse consisting of municipalities, cooperatives, investor-owned utilities, and government entities, and are situated from Florida to Oregon. The coal producers provide coal for domestic electric utilities and manufacturing industries as well as exporting coal via the West Coast, the Great Lakes, the Mississippi River, and by direct rail to Mexico and Canada. The rail product and service suppliers provide virtually all of the running and electronic components and the manufacture and repair of coal railcars used by the members that own, lease, and manage coal railcar fleets. WCTA members own or lease about 50,000 railcars and produce or consume over 500 million tons of coal annually.

Although WCTA is a shipper-based organization, we assiduously endeavor to cooperate with coal transportation providers whenever possible. Although the rail carriers are not official members of WCTA, they are active participants in our working committees that facilitate solutions to issues and challenges of vital interest to the membership and the railroads. Several WCTA initiatives arising from WCTA activities have been notably successful in improving the level of cooperation and operating efficiency in the western U.S. The coal transportation infrastructure benefits significantly from these endeavors.

THE CURRENT VIEW

Coal continues to be the unsung facilitator for our strong economy as coal is the fuel of economic choice for supplying 56% of the nation's electricity. The point is that an efficient, reliable, competitive coal transportation system is absolutely necessary for an efficient, reliable, competitive electricity supply to fuel our economy and maintain our standard of living.

The western coal industry continues to be inextricably linked in a triangle. The first leg is the coal producers and the rail product and service suppliers; the second leg is the coal transportation suppliers; and the third leg is the coal consumer who is generally the shipper of record. Rail transportation dominates the West and particularly so in the Powder River Basin ("PRB") with over 93% of all coal ton-miles carried by rail even when considering barging for a segment of the coal haul. Rail transportation from the PRB represents over 300 billion ton-miles of transportation with an average haul of slightly over 1000 miles.

The western coal industry had a challenging two years from mid-year 1997 to mid-year 1999 in terms of the reliability of coal transportation. Shortly after the UP-SP merger, unit trains cycle times increased by as much as 50% in some corridors from the PRB and by 50% to 70% from Colorado and Utah. Even cycle times on the BNSF were up by 10% for many customers. As the system came back to normalcy, empty train congestion occurred in the PRB during the early part of 1999 causing friction between rail carriers and producers.

We are now happy to report that our railroad partners in the coal business are performing in a highly satisfactory manner. Recently, it appears that we are at last operating smoothly and efficiently with trainsets being idled mainly as a result of excellent transit times. Trainsets are being idled as the full utilization of the running sets makes the additional sets unnecessary to meet demand. However, it must be understood that the additional trainsets now being idled at great expense to shippers were purchased or leased by the shippers as a necessity to meet annual coal demand and as a direct result of the unreliable and inadequate rail service and low transit speeds experienced during the last several years. These unique and specialized investments are now sitting idle with sublease impossible considering that most shippers in the West are similarly situated.

Cooperation and communication within the three legs of the coal business are improving and we are addressing issues and continuing to solve problems in meetings hosted by WCTA or the railroads. We are all working to avoid service crises as coal demand continues to grow in the West. It remains to be seen how the infrastructure will handle an increase in coal demand. Shipper concerns over lack of effective competition and, in many cases, being captive to a single carrier at the origin or destination remain.

FUTURE CONCERNS

There is now a proposal for consolidation accompanied by threats of retaliatory action by other rail carriers that the future of the North American rail network will necessarily culminate into as little as two transcontinental railroads with the potential of transcontinental duopoly power. Let us state clearly that the members of WCTA are not opposed to mergers and consolidations in any generic sense. If a rail consolidation is truly an end-to-end transaction with absolutely minimal two-to-one reductions in competitive access and if such a consolidation does not result in a diminution of service nor imposes "bottlenecks" on shippers, and its provisions and conditions maintain undiminished competition, we would not oppose. Unfortunately, such a transaction is very rare and has not been representative of the recent history for shippers.

The promise of a transcontinental railroad is to provide more efficient routing and reduced transit times, to improve the ease of doing business with more "one stop shopping" and better e-commerce transactions, to avoid terminal and beltline railroad congestion, to reduce operating costs for corporate overhead and other support systems, and to reduce costs for future capital investment. Will the reality match the promise? If the reality doesn't match the promise, coal shippers should not suffer through another period of instability while not receiving specific benefits coupled with decreased competitive shipping options.

The WCTA has the following concerns about the power of a duopoly of transcontinental railroads over captive coal shippers:

- Coal shippers are familiar with a duopoly in the West. However, the fastest growing area for coal demand is on the Powder River Basin Joint Line that has dual competitive access by coal shippers due to a prescient decision by the Interstate Commerce Commission many years ago. We believe this specific and unique competitive access has benefited all parties and all parties have been willing to make significant investments for improving service to the Joint Line. However, as a general proposition, a duopoly of transcontinental railroads does not promise any access or real competition as the "ribbons of steel" will be owned and accessed by a single entity. Does the PRB experience mean that "regional competitive access" or "terminal competitive access" is a successful mitigating factor to duopoly power?
- Previous merger conditions in the West requiring trackage rights have not been successful in providing competitive coal movements across these tracks despite promises by both rail carrier parties to the trackage rights. Any merger or consolidation leading to transcontinental duopoly power will selectively require readily enforceable trackage rights, reciprocal switching, and terminal access as a condition of the merger or consolidation to maintain competition at pre-merger levels and avoid new bottlenecks.
- A beneficial consolidation of railroads may be followed by a series of ill-advised mergers for the sake of "staying competitive" or being larger for the sake of being "the biggest".

Recent history shows that a reasonably strong railroad that merges with a financially insolvent railroad by increasing debt imprudently to consummate such a merger leads to poor operating results and an unsatisfactory balance sheet for many years. The only thing worse would be to merge two railroads that don't really want to merge but decide to merge anyway. Shippers should not have to pay for poor decisions by rail carrier management to consummate a merger or consolidation.

- Post merger rail service has been unsatisfactory for coal producers and consumers following the Conrail acquisition, the UP-SP merger and, although not so broadly reported, in the Midwest following the CN-IC merger. This period of service problems has created measurable loss of income for the coal producers and additional cost for the coal consumers. Any future ill-conceived merger will produce similar problems such costs must not be imposed on shippers.
- The current anti-trust immunity enjoyed by the railroads could create tremendous duopoly power by the transcontinental railroads if not modified. Actions taken to monopolize rail traffic, or to utilize dominant market power, or to tie commodities and services should all be subject to remedy under the anti-trust laws.
- The provisions of the Staggers Act envisioned a goodly number of robust railroads and a reliance on the marketplace with competitive forces. At the time of the passage of The Staggers Act, about 40 Class I railroads were operating in the United States. Class I railroads now number in single digits and the geographic concentration of the surviving railroads impose a captive situation on all too many shippers. New entry by a rail carrier in the face of a transcontinental duopoly would be impossible. Though the intent was to promote greater reliance on competition and less on regulation, the law as currently

enacted may be ineffective in a new era of a continental duopoly and will certainly have to be revisited.

- New and innovative railcar technology may be stifled by fewer railroads not necessarily requiring technological progress to maintain market share. What will be the driving force to take technological risk for innovations in wheels, brakes, electronics, running gear, couplers, and railcar construction and design if there is no competitive need for the rail carrier? In any case, the two Chief Mechanical Officers will hold tremendous power over the testing and implementation of new technology.
- Merger conditions for coal shippers will require specific enforcement provisions against the transcontinental railroads. Currently, WCTA members are forced to resort to litigation to restore the competitive access that existed for their facilities prior to a specific merger when such access was lost as a result of the merger

.SUMMARY AND CONCLUSIONS

- WCTA desires that the railroads serving the western coal fields and their customers be financially healthy with a sufficient return on investment to provide reliable service. Despite rhetoric from some quarters, the coal shippers of WCTA have never called for nor supported "re-regulation". However, many shippers of WCTA are truly captive to a single railroad and effective constraints on anti-competitive behavior must be available under the law as fairly applied.
- WCTA does not necessarily object to a well-conceived end-to-end consolidation that will result in a transcontinental railroad if it does not decrease competition or create new bottlenecks. This statement should not be interpreted as stating that WCTA supports a consolidation that does not have clear benefits for the shippers and that is not in the

public interest. We certainly will not support an ill-advised merger that has harmful effects to the resulting company's balance sheet and its capability to provide adequate service to shippers. It is inconceivable to us that a railroad could imprudently increase debt to consummate a merger, then provide inadequate service and threaten to set pricing to its new captive shippers to whatever the market will bear. All this to shore up a weak balance sheet caused entirely by its own actions. This is a revisit of the 19th century of monopoly and must not be allowed.

- Any conditions on a merger or consolidation that are made to ensure competitive access must be readily enforceable. Remedies for failure of adequate service should be delineated as part of the merger or consolidation approval.
- The western coal transportation infrastructure is in a welcome period of stability and efficiency with orderly growth. Any proposal that would change that infrastructure should have the burden to conclusively show that economic harm to coal shippers and/or any diminution of service for shippers and mines are not probable results of any merger or consolidation.
- WCTA is not aware of any urgency to consummate any transcontinental merger or consolidation because of the imminent financial failure of any party or because the public interest demands a reorganization. Future proceedings should be handled with deliberation to assure that full examination of ideas and concerns. Certainly, the difficulties of the Conrail dissolution and the recently completed CN-IC merger should be resolved before coal shippers are subjected to the possible disruptions of another merger or consolidation.

Coal producers, coal consumers, and railroads are partners in the coal business. These partners provide a vital service to the U.S. economy by producing and utilizing the most available and reliable domestic fuel to make electricity and to assure energy for industry and consumers. Further, as Phase II of the Clean Air Act Amendments is being implemented in 2000-2001, power plants using the very low sulfur Southern Powder River Basin and rocky Mountain coals cannot afford supply disruptions without jeopardizing their compliance schedules and the reliability of their system dispatch.

Respectfully submitted,

Thomas C. Canter

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Executive Director